

ASSEMBLY BILL

No. 382

Introduced by Assembly Member Mullin

February 14, 2013

An act to amend Sections 6254.26, 54956.81, and 54957.5 of the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 382, as introduced, Mullin. State and local government: alternative investments: public access.

Existing law, the California Public Records Act, requires state agencies and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. Existing law excludes from disclosure records of public investment funds regarding alternative investments, as defined, unless the information has already been publicly released by the keeper of the information. Existing law defines an alternative investment to mean an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

This bill would further exempt from disclosure records of public investment funds regarding nonpublicly traded direct real estate investments or nonpublicly traded indirect real estate investments, as defined. The bill would make conforming changes to related provisions.

Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law authorizes the legislative body of a local agency that invests pension funds to hold a meeting in closed session to consider the purchase or sale of particular, specific pension fund investments.

This bill would further authorize the legislative body of a local agency that invests pension funds to hold a meeting in closed session to consider information related to alternative investments and alternative investment vehicles, as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.26 of the Government Code is
2 amended to read:
3 6254.26. (a) Notwithstanding any *other* provision of this
4 chapter or other law, the following records regarding alternative
5 investments in which public investment funds invest shall not be
6 subject to disclosure pursuant to this chapter, unless the information
7 has already been publicly released by the keeper of the information:
8 (1) Due diligence materials that are proprietary to the public
9 investment fund or the alternative investment vehicle.
10 (2) Quarterly and annual financial statements of alternative
11 investment vehicles.
12 (3) Meeting materials of alternative investment vehicles.
13 (4) Records containing information regarding the portfolio
14 positions in which alternative investment ~~funds~~ *vehicles* invest.
15 (5) Capital call and distribution notices.
16 (6) Alternative investment agreements and all related documents.
17 (b) Notwithstanding subdivision (a), the following information
18 contained in records described in subdivision (a) regarding
19 alternative investments in which public investment funds invest
20 shall be subject to disclosure pursuant to this chapter and shall not
21 be considered a trade secret exempt from disclosure:
22 (1) The name, address, and vintage year of each alternative
23 investment vehicle.

1 (2) The dollar amount of the commitment made to each
2 alternative investment vehicle by the public investment fund since
3 inception.

4 (3) The dollar amount of cash contributions made by the public
5 investment fund to each alternative investment vehicle since
6 inception.

7 (4) The dollar amount, on a fiscal yearend basis, of cash
8 distributions received by the public investment fund from each
9 alternative investment vehicle.

10 (5) The dollar amount, on a fiscal yearend basis, of cash
11 distributions received by the public investment fund plus remaining
12 value of partnership assets attributable to the public investment
13 fund's investment in each alternative investment vehicle.

14 (6) The net internal rate of return of each alternative investment
15 vehicle since inception.

16 (7) The investment multiple of each alternative investment
17 vehicle since inception.

18 (8) The dollar amount of the total management fees and costs
19 paid on an annual fiscal yearend basis, by the public investment
20 fund to each alternative investment vehicle.

21 (9) The dollar amount of cash profit received by public
22 investment funds from each alternative investment vehicle on a
23 fiscal year-end basis.

24 (c) For purposes of this section, the following definitions shall
25 apply:

26 (1) "Alternative investment" means an investment in a private
27 equity fund, venture fund, hedge fund, or absolute return fund, *or*
28 *a nonpublicly traded direct real estate investment or nonpublicly*
29 *traded indirect real estate investment.*

30 (2) "Alternative investment vehicle" means the limited
31 partnership, limited liability company, or similar legal structure
32 through which the public investment fund invests in portfolio
33 companies *or nonpublicly traded real estate.*

34 (3) "*Nonpublicly traded direct real estate investment*" means
35 *the direct ownership of private real estate investments in the name*
36 *of a fund or special purpose entity, whether equity or debt,*
37 *consisting of a 100 percent interest or partial interest in the*
38 *investment position. These investments consist of separate account*
39 *investments.*

1 (4) “Nonpublicly traded indirect real estate investment” means
2 the indirect ownership of private real estate investments in the
3 name of a fund or special purpose entity, whether equity or debt,
4 consisting of a 100 percent interest or partial interest in the
5 investment position. These investments are commonly interests in
6 limited partnerships or limited liability corporations, similar to
7 most private equity investments. These investments consist of
8 commingled fund investments.

9 (5) “Nonpublicly traded real estate” means a nonpublicly traded
10 direct real estate investment or nonpublicly traded indirect real
11 estate investment.

12 ~~(3)~~

13 (6) “Portfolio positions” means individual portfolio investments
14 made by the alternative investment vehicles.

15 ~~(4)~~

16 (7) “Public investment fund” or “fund” means any public
17 pension or retirement system, and any public endowment or
18 foundation.

19 SEC. 2. Section 54956.81 of the Government Code is amended
20 to read:

21 54956.81. Notwithstanding any other provision of this chapter,
22 a legislative body of a local agency that invests pension funds may
23 hold a closed session to consider the purchase or sale of particular,
24 specific pension fund investments *or the information set forth in*
25 *subdivision (a) of Section 6254.26*. All investment transaction
26 decisions made during the closed session shall be made by rollcall
27 vote entered into the minutes of the closed session as provided in
28 subdivision (a) of Section 54957.2.

29 SEC. 3. Section 54957.5 of the Government Code is amended
30 to read:

31 54957.5. (a) Notwithstanding Section 6255 or any other
32 provisions of law, agendas of public meetings and any other
33 writings, when distributed to all, or a majority of all, of the
34 members of a legislative body of a local agency by any person in
35 connection with a matter subject to discussion or consideration at
36 an open meeting of the body, are disclosable public records under
37 the California Public Records Act (Chapter 3.5 (commencing with
38 Section 6250) of Division 7 of Title 1), and shall be made available
39 upon request without delay. However, this section shall not include

any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, ~~or~~ 6254.22, *or* 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) ~~Nothing in this~~ This chapter shall *not* be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that ~~no~~ a surcharge shall *not* be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). ~~Nothing in this~~ This chapter shall *not* be

1 construed to require a legislative body of a local agency to place
2 any paid advertisement or any other paid notice in any publication.

3 SEC. 4. The Legislature finds and declares that Sections 1, 2,
4 and 3 of this act, which amend Sections 6254.26, 54956.81, and
5 54957.5 of the Government Code, impose a limitation on the
6 public's right of access to the meetings of public bodies or the
7 writings of public officials and agencies within the meaning of
8 Section 3 of Article I of the California Constitution. Pursuant to
9 that constitutional provision, the Legislature makes the following
10 findings to demonstrate the interest protected by this limitation
11 and the need for protecting that interest:

12 The public interest in nondisclosure pursuant to this act
13 outweighs the public interest in disclosure, since disclosure of the
14 information under the act puts public pension funds at a competitive
15 disadvantage in the marketplace likely reducing a pension fund's
16 return on investment and thereby necessitating greater contribution
17 from the public for the support of public pensions.